BA-81-0 04-AK

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOP THE MINNESOTA ENERGY AGENCY

In the MAtter of the Recertification of
the SHERBURNE COUNTY GENERATING UNIT NO. 3
AS PROPOSED BY NORTHERN STATES POWER CO. FIRST PREHEARING ORDER
pany, Southern Minnesota Municipal Power
AGency, and UNited Minnesota Municipal
Power AGENCY, Joint Applicants.

A meeting in the above-entitled matter was held on April 16, 1981, pursuant to the Order of the Hearing Examiner. Tne purpose of this meeting was to resolve a dispute which had arisen regarding discovery.

Raymond A. HaiK and Joseph D. Bizzano appeared on behalf of Northern States Power Company. Craig A. Beck appeared on behalf of Southern Minnesota Municipal Power Agency. William J. Kepyel appeared on behalf of United Minnesota Municipal Power Agency. Jocelyn F. Olson appeared on behalf of the Polluticn Control Agency Board. James Lackner appeared on behalf of the supply and Demand anaLysis Staff (formerly policy -Analysis staff) of the Energy Agency. ,James D. Miller appeared on bebalf of Minnesota Public Interest Research CrouD. Pecky A. Comstock appeared on behalf of Citizens Against Power Plant Pollution, Inc. Dwight A. Wagenius appeared on behalf of the Director of the Eneroy Agency (not a party) . Christie B. Eller appeared on behalf of the Power Plant Siting Program Staff (not yet a party). !he Examiner was accompanied by Phyllis A. Reha of the Office of Administrative Hearings.

Two issues were discussed at this meeting: Identification of parties, and discovery .

With regard to identification of parties, there was a discussion of whetner One Flaminer's characterization of One case, as set forth in Paragraph ]- of his Memorandum dated April 3, 1981, was correct. It was determined that the characterization was correct. Based upon that determination, the Examiner

stated that it was his belief that the parties to the recertification would be the same parties to the original proceeding the listed at the bottom of rage 1 of the Memorandum), plus SMMPA and UITA, arA zal, additional persons who intervene. @ere was no objection to the Examiner's statement.

With regard tto di - , there was an extensive discussion of various consideraticns. Etsentially, the Agency staff, IPIRG, CAPPP, and Power Flant Sitirg Staff favored early discovery. All three Applimmit utilities favcred delayed discovery.

Tne arguments in favor of early discovery centered around the six-month time limitation contained in @iinn. stat. 1161i.13, suld. 5 (1981) and the S@ay time period set forth in EA 5040). 7base favoring early di ry stated i,@17-c-it if @e time limits were to be ccirplied with, and if discovery were to 'rave any value, discovery would have to begin at the present time because the issues in this hearing are both broad and complex, and time is needet IDoUi to gadier data anO digest it. It was argued that the Applicants had the luxury of waiting to file their applications until their cases were prepared

and then fressuri@ Intervenors to ccrplete discovery promptly wnile, at the
s
same tire,, seeking discovery from Intervenors. Fl na I ly, i t wa a rgued @a t i f
mucln of the material which is souc)ht 1-y discovery is going to be set forth in
the Applications (as the Applicants alleqe), then there is no difficulty in
the I\pplicarts excerpting that material and providing it in advance of their
application filings.

Tne arglvents against early discovery essentially centered around the idea
that the same personnel who would respond to discovery requests are presently
involved in attempting to complete the PVFqicatiOrLc,- If they are allowed to
complete the Applications, the Applications can be filed. promptly, and all
parties i,4ill have access to the information contained in tnem. If , on the
'her @id, Applicants were forced to take these people away from the job of
ot
preparing the Applications, and put them to work answering discovery requests,
Uie filing of the Applications would be delayed. It was also stated that i t
was inefficient to begin discovery before the ODpli(:atic)ns had been submitted,
because the Applications define the issues aid the Ppplicants' Fosition wath
respect to them (issues such as forecasts and forecast methadoloti would be
discussed extensively in the Applicationsy Pdso, since it is not known, with
f inality, who the Farties will be, Applicants did not want to be burdened with
requests for discovery from @@ns who ultimately did not @ome @rties.
Finally, at least one Applicant indicated a desire to have prefiled testi@
prepared early, because he preferred to @uct discovery of Intervenors based
on their prefiled testimony, rather than yticc to it.

The Fxaminer stated that he saw the problem as involving only two options:
If the sionionei statutory time limit were to be ohmoved, discovery would
have to start early. If, on the other hand, the six-month time limit were not
to be @erved, then discovery could te delayed until after the Applications
were filed. Intervenors generally agreed with the Exa-,niner, while Ppplicants

stated that they believed that discovery could be delayed and the proceedirxg
could still be concluded within Oie six-month time period. Vlnen asked which
of the two options tney preferred, one Applicant stated that it preferred to
delay discovery and extend the six-month time period if necessary. kx)ther
Applicant stated that he did not want to extend the six-month time period, but
ynat he did not foresee it as being any youblem because his client was closer
to f iling than the ooier Applicants. The third Applicant did not express any
clear-cut ddoice, but did argue in favor of delaying discovery until the Appli-
cations were complete.

The Fxaminer ruled that discovery will be delayed until after the Applica-
tions (or in one case, the Supplement) were filed. At that point, discovery
can be(gin. In addition, if the Director found that art Application was not
substantially complete, Oien Applicants' responses to discovery requests in
the sane subject matter area as Ctie deficiencies noted by the Director may be
delayed Fending submission of the curative irdormation to the Director.

The attached @.'4emorandum is incorporated herein.

Eased upon Oie foregoing, the Fxaminer issues the fol:Lowing:

0 P D E P

1. That IQSP, SMIPA, IK!IVA, S14ay and Eemand Analysis Etaff, 111% BDarl,

t'VIM, CAPPP and @'ECCA are presently parties to this proceeding. 7his s@ll

not prohibit any other person from petitioning to intervene, nor shall it pro-
hibit any of thp above-listed parties from withdrawing as parties.

2. That no orders to compel discovery elill issue until tne party from whom discovery is sought has filed its Ppplicatiori (in the case cl VSI and LRNPA) or Supplement (in the case of St?PA). @ce the Application (or Supple-
ment) has been filed, then discovery may commence, and if voluntary discovery proves ursatisfactory, the Fxaminer will issue appropriate orders upon motions duly made pursuant to 9 ICAP 2.214 (and, to the extent that it does not corn
f I ict wi tli the former, FA 512) - thould the Director find any of the Applica-
tions (or supplement) to be not substantially complete, an(] should any of the Materials sou@t 'Cy the Director by the sare as materials sought by an out-
standing discovery r@est, then the Applicant shall be relieved from comply-
ing with that portion of the discovery request until such time as the informa-
tion required by the Director is filed.

Fated this :---day of April, 19pl.

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M E M 0 P A N D U M

@e lyaminer believes that the too options which he set forth at the meet-
i@ig, a-rid -Wjiich are repeated above, are really the only two options available.
Ooviously, the Examiner does not take li@tly the I @islative directive. Eut,
I-,e finds the arguments of the Applicants persuasive with regard to personnel
and Cie wisdom of allowing the Applicants to set forth their positions prior
to responding to discovery. The time limits are designed to protect Pppli-
cants, and to the extent that they object to a schedule aimed at meeting those
time limits, they are running the risk of constructive waiver.

'lie Examiner understands the practicalities raised by VPIRG and other In-
tervenors with regard to Ene complexity aid scope of this proceeding, and the
need for time to boui collect and digest information. As was stated by the

ner at the meeting, he will use the authority available to him to assure Chat adenuate tire is available to all parties to corplete discovery prior to oie start of the hearing. in a matter such as this one, the Examiner firmly believes Chat discovery can result in focussing the hearing on actual disagree-ments, thereby producing a clearer record and a shortened hearing. But, i;i order to achieve these goals, discovery must be complete and adequate time must be allowed to digest its products. The Examiner understands that this ruling delaying discoveqy will result in a greater-than-i-iormal delay in the start of the heari nqs, but he believes i t to be an unavoidable trade-of f .

A. W. K.